IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

-

WRIT PETITION No. 32918 of 1998

Between:

Jalastra Kalpana

..... PETITIONER

AND

1. The Government of Andhra Pradesh, rep. by its

Principal Secretary, Social Welfare (N) Department,

Secretariat Buildings, Hyderabad.

2. The A.P. State Housing Corporation, rep. by its

Managing Director, 3-6-184, Urdugalli,

Himayatnagar, Hyderabad-29.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order of direction, more particularly one in the nature of Writ of Mandamus declaring the Proceedings No.A4/4074/97, dated 30-10-1998 of the 2nd respondent herein thereby rejecting the claim for regularization of services as arbitrary, illegal, unjust and unfair and further direct the respondents to regularize the services of petitioner from her initial appointment.

Counsel for the Petitioner: Mr.M.RAVINDRANATH REDDY

Counsel for the Respondent: G.P. for Social Welfare for R1

Mr.V.CH.NAIDU for R2.

The Court made the following :

-

-

-

-

-

-

ORDER:

This writ petition is directed against the Proceedings dated 30-10-1998 issued by the 2nd respondent rejecting the claim of the petitioner for regularization of her services as Sweeper/Attender in the 2nd respondent-organization.

The admitted facts are that the petitioner studied upto IX class and belongs to Scheduled Caste category. She was appointed as a Sweeper with effect from 27-8-1983 in the Office of the District Manager of the 2nd respondent-Corporation at Nellore as a Sweeper on daily wage basis. Respondent No.1 by his Proceedings dated 23-5-1987 and 21-7-1987 requested the Government to accord general permission to regularize the services of all employees, who were working on daily wage basis between 30-6-1983 and 19-10-1983 in furtherance of the earlier Governmental Orders by relaxing the Employment Exchange procedure etc.

It is the contention of the petitioner that the 2nd respondent did send proposals to the 1st respondent for regularization of service of the employees, who are juniors to her, but not her case. Therefore, the action of respondents is arbitrary, illegal and unjust. Government of Andhra Pradesh issued G.O.Ms.No.58, dated 30-3-1988 regularizing the services of the employees, who were appointed on daily wage basis. She made representations starting from 30-4-1984 to 14-7-1988 and the 2nd respondent issued Proceedings dated 30-8-1988 rejecting her claim stating that the post of Sweeper is not provided for in the service Rules of the respondent-Corporation. Since the reasons furnished were baseless, she immediately filed another representation

stating that the service regulations of the Corporation provides for the cadre of Sweeper/Attender and she is entitled for regularization. As there was no response, she made several representations, the last one being dated 12-11-1997. Thereafter, she filed W.P.No.31144 of 1997 before this Court questioning the inaction on the part of respondents in regularizing her services as Sweeper/Attender or any equivalent post as arbitrary and illegal. The said writ petition was disposed of on 6-11-1997 with a direction to the respondents to consider her case for regularization in the light of her application dated 12-11-1997. In pursuance of the said direction, the impugned proceedings were issued stating that her services could not be regularized on par with others, as she was only a part-time daily wage employee and not a full time daily wage employee and she was given daily wages on par with other full time workers only with effect from 15-9-1989 and as such, she becomes junior to the employees referred to by her.

Respondent No.2 filed a detailed counter affidavit denying the allegations made by the petitioner. It is asserted that the four persons mentioned by the petitioner said to be juniors to her, were not juniors, as they were working as full time daily wage workers, whereas the petitioner was working only as a part-time daily wage worker. The services of those persons were regularized by the 2nd respondent as per G.O.Ms.No.212, dated 22-4-1994 as they fulfilled the eligibility criteria as laid down in the said G.O. Since the petitioner was a part-time Sweeper, who was taken as a full time NMR with effect from 20-9-1989, she cannot compare herself with that of the above 4 persons. Considering her representation dated 21-8-1989, the District Collector, Nellore converted her as a full time NMR with effect from 20-8-1989. The seniority of the petitioner among NMRs shall be considered with effect from the date of her appointment as a full time NMR, but not with effect from the original date of her joining in the Corporation as a part-time Sweeper. However, in pursuance of the orders of this Court in W.P.No.31144 of 1997, dated 26-11-1997 the Board in its 75th Meeting held on 11-9-1998 discussed the matter in detail and resolved to continue the petitioner in Nellore District Office on daily wage basis until further orders. Again, the request of the petitioner for regularization of her service was considered on 8-10-1998 by the Administrative Reforms Committee of the respondent-Corporation and rejected by the impugned Proceedings. The same can neither be said to be arbitrary nor illegal.

Heard both sides.

Learned counsel for the petitioner contended that the petitioner studied upto IX class and working as a daily wage Sweeper for the last more than 21 years as on date. Assuming that she was not entitled for regularization on par with other full time daily wage workers, at least, she is entitled for being appointed on regular basis with effect from 20-9-1989, the date on which she was appointed as a full time NMR/Sweeper. Denial of regularization of her services in the cadre of Sweeper/Attender is arbitrary and illegal. She is fully qualified and eligible for being appointed to the said post and also entitled for regularization, if not from the date of her initial appointment, at least from the date of her appointment on full time basis.

Learned counsel for the 2nd respondent submitted that there is no post of Sweeper borne on the cadre of the Regulations governing the service conditions of the A.P. State Housing Corporation employees. There is no post of Sweeper available in the office of the 2nd respondent; therefore, she is not entitled for regularization of her services in the cadre of Sweeper/Attender. The impugned order passed by the 2nd respondent is valid and does not call for any interference at the hands of this Court.

At the outset, it may be noticed that the learned counsel for the petitioner placed the service regulations of A.P. State Housing Corporation, wherein the cadre of Sweeper is included as IV grade service along with Attenders. That is the reason, the petitioner was appointed as a full time Sweeper/Attender in the office of the 2nd respondent with effect from 20-9-1989. Once this is the position, the petitioner is entitled either for being appointed as a Sweeper or Attender or Sweeper-cum-Attender, which post is borne on the cadre of the respondent-Corporation. Therefore, the contention of the learned counsel for the 2nd respondent that there is no post of Sweeper available is without any substance. Sweeper, Attender, Night Watchman and Watchman are all the posts included into one cadre i.e. IV Grade service. Therefore, the question of not appointing the petitioner as a Sweeper as there was no cadre post available is only a futile effort made by the 2nd respondent. In fact, the petitioner could have been considered as a full time NMR Sweeper/Attender prior to the four persons mentioned in the counter affidavit, since she was fully qualified to hold the said post and more qualified as far as educational qualification was concerned. Only because she is a lady, she was asked to continue as a Sweeper on daily wage basis, whereas, the men, who were appointed later to her, were continued as full time employees. This is where she was discriminated and denied

the regular appointment. In fact, all those four persons were appointed after the petitioner was appointed as a part-time Sweeper and their services were regularized. In fact, even the petitioner was entitled for being appointed on regular basis, as she had completed five years of service by that time on par with others. Even otherwise, she had completed 10 years of service as part-time and contingent employee by 25-11-1993 and she is entitled for regularization as per G.O.Ms.No.212, dated 22-4-1994 read with G.O.Ms.(P) No.112, dated 23-7-1997. The only resistance on the part of respondents in regularizing the services of the petitioner is that there is no post of Sweeper available in the cadre, which is not true. Attender, Sweeper, Night Watchman, Watchman are all the equivalent posts and borne on the cadre of the Regulations of the A.P. State Housing Corporation. This is a case where since the petitioner had accepted the post of Sweeper as a lady, she was denied the full time employment in preference to male persons. The four male members, who were appointed after the petitioner, were appointed on full time daily wage basis as Attenders, which post is equivalent to that of Sweeper. It is not the case of the 2nd respondent that the petitioner was not eligible for being appointed as an Attender/Sweeper as on the date of her engagement as a part-time Sweeper nor she was not entitled for being appointed as a full time daily wage employee on the date when the other four persons were appointed. Petitioner has been continuously working for the last 21 years and she is more qualified than some of the persons appointed on full time daily wage basis after her appointment and whose services were regularized in the cadre of Attender. Therefore, the petitioner is fully qualified and eligible to hold the post of Sweeper and the contention of the 2nd respondent that there is no vacancy available on the cadre of Sweeper, which is equivalent to that of Attender, is untenable. Appointment of the petitioner as a full time NMR from 20-9-1989 itself shows that there is a regular post of Sweeper/Attender available at least from that date i.e. 20-9-1989. The petitioner, as on date, had crossed the age of 50 years. If her services are not regularized at this stage, she would be denied her rightful pension etc. The impugned order is, therefore, set aside. The respondents are directed to consider the case of the petitioner for regularization of her services in the cadre of Sweeper/Attender from the date of her appointment on full time basis i.e. with effect from 20-9-1989, if not prior to that. This exercise shall be done within a period of six months from the date of receipt of a copy of this order, if necessary by obtaining relaxation of any kind from the concerned authorities.

The writ petition is allowed to the extent indicated above. There shall be no order as to costs.

9th September, 2004

Prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this ninth day of September Two thousand and Four.

ASSSISTANT REGISTRAR

// TRUE COPY //

To SECTION OFFICER

1. The Principal Secretary, Social Welfare (N) Department,

Government of Andhra Pradesh,

Secretariat Buildings, Hyderabad.

2. The Managing Director, A.P. State Housing Corporation,

3-6-184, Urdugalli, Himayatnagar, Hyderabad-29.

3.2CCs to Govt.Pleader for Social Welfare, High Court Buildings, Hyderabad (O.U.T.)

4.2CD copies